



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live

Frank O'Bannon
Governor

Lori F. Kaplan
Commissioner

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(317) 232-8603
(800) 451-6027
www.state.in.us/idem

January 13, 2003

Mr. Thomas Skinner
U.S. EPA
Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3507

RECEIVED
FEB 07 2003

NPDES SUPPORT &
TECHNICAL ASSIST BR.
EPA, REGION 5

Dear Mr. Skinner:

On September 17, 2002, the U.S. District Court of Southern Indiana ordered the State of Indiana to take specific actions within 120 days relative to Concentrated Animal Feeding Operations (CAFO) in our state.

Indiana filed a Motion to Amend the Court's ruling on September 27, 2002. In that motion, Indiana noted that, under state rulemaking procedures, two of the three options provided by the Court could not be exercised in the timeframe allotted by the Court. The Court has not ruled on Indiana's Motion.

This correspondence outlines Indiana's actions to comply with the U.S. District Court decision.

Indiana has taken the following actions to fully comply with the Court's decision:

1. On October 25, 2002, issued the first individual National Pollutant Discharge Elimination System (NPDES) permit to a CAFO that has discharged in the past. See Enclosure 1 - NPDES permit to McGrady Hog Farm.
2. Public noticed sixteen (16) individual NPDES permits for other concentrated animal feeding operations that have had a discharge since January 1, 2000. These individual permits were public noticed on December 13, 2002 and are expected to be finalized by the end of February 2003. See Enclosure 2 - a list of individual NPDES permits public noticed to date.
3. On January 13 and 14, 2003, sent a letter to all CAFOs in Indiana, including those with documented discharges since 1987, requiring each CAFO to submit an NPDES permit application. See Enclosure 3.

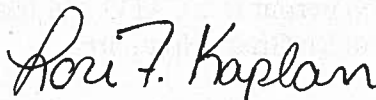
4. Prepared a Second Notice of Rulemaking for an NPDES General Permit for all CAFOs in Indiana. The Second Notice of Rulemaking will be published by the Legislative Services Agency in the Indiana Register on February 1, 2003. See Enclosure 4.
5. Established an expeditious schedule for submittal of NPDES permit applications and for processing of NPDES permits for CAFOs. See Enclosure 5.

Indiana anticipates that all CAFOs in Indiana will have individual NPDES permits or will have filed Notices of Intent to comply with an effective NPDES General Permit for CAFOs prior to the end of 2003. This schedule is well ahead of the requirements in the recently EPA announced CAFO regulations, which require coverage of NPDES permits for many CAFOs no earlier than 2006. In addition, in response to the changes to the EPA regulations for CAFOs, Indiana anticipates revising our NPDES program (i.e., amending pertinent provisions in Title 327 of the Indiana Administrative Code, Article 5) before the time provided in 40 CFR section 123.62.

It is our intent for these actions to fully comply with the U.S. District Court's Order. If the current rulemaking to establish an NPDES general permit for CAFOs is completed and effective in time, Indiana will encourage the submittals of Notice of Intent to comply with the general permit in most situations. This will ease the administrative burden of processing up to 550 individual NPDES permits, preclude the diversion of significant resources away from processing NPDES permits for direct dischargers, such as municipal wastewater treatment plants and industry dischargers, and assure, consistent with Indiana law, that the Department timely makes decisions on applications for NPDES permits submitted by CAFOs (*see* Ind. Code 13-15-4-1).

We will work closely with the U.S. Environmental Protection Agency in the coming months on the above actions. Please contact me at the earliest possible time if there are any concerns relative to our efforts to comply with the federal court decision.

Sincerely,



Lori F. Kaplan
Commissioner

**CAFO's PUBLIC NOTICED FOR AN NPDES PERMIT
IN DECEMBER OF 2002**

<u>Permit No.</u>	<u>Facility Name</u>	<u>City</u>	<u>County</u>
INA000102	Jerry Lambright	Berne	Adams
INA000103	Consolidated Nutrition	Decatur	Adams
INA000104	Buechler Farms	Celestine	Dubois
INA000105	Pohlmann Hog Farms	Crawfordsville	Montgomery
INA000107	Northwind Pork	Kewanna	Fulton
INA000108	Winkel Farms	Oakland City	Gibson
INA000109	Sands Pork Farm	Bowling Green	Clay
INA000110	Taylor Swine Farms	Loogootee	Martin
INA000115	Fair Oaks Dairy Farm	Fair Oaks	Newton
INA000116	Jeff Sevier Hog Farm	Oakland City	Gibson
INA000118	Shockney & Son	Union City	Randolph
INA000119	Prema-Lean Pork	Greensburg	Shelby
INA000120	Muncie Sow Unit	Eaton	Delaware
INA000121	Darrell Kemp	Loogootee	Martin
INA000122	United Feeds	Jasper	Dubois
INA000123	Roger Hoffman	Jasper	Dubois



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IMPORTANT NOTICE

January 13, 2003

Dear Confined Feeding Operation Owner/Operator:

Re: Requirement to Apply for a Federal
NPDES Permit

On September 17, 2002, the U.S. District Court for the Southern District ordered the State of Indiana to require a National Pollutant Discharge Elimination System (NPDES) permit for federally-defined Concentrated Animal Feeding Operations (CAFOs). The Court ordered Indiana to establish an NPDES general permit for CAFOs within 120 days of the Court's ruling or require every CAFO in Indiana to apply for and obtain by a date certain an individual NPDES permit. In addition, on December 15, 2002, the Administrator of the U.S. Environmental Protection Agency (EPA) signed a new federal regulation which similarly requires all federally-defined CAFOs to obtain an NPDES permit and otherwise comply with specific provisions contained in the final federal regulation.

Indiana does not have a general NPDES permit rule in place and cannot establish a viable general permit rule under Indiana law within 120 days of the Court's decision.

Therefore, the purpose of this correspondence is to notify you of your obligation to submit an application to obtain an individual NPDES permit. Please submit the enclosed application by April 30, 2003. Based on the review of records in our public file, your farm maintains in confinement more than the number of animals provided in Title 327 of the Indiana Administrative Code, rule 5-4-3(b)(2)(A) or meets the criteria in rule 5-4-3(b)(2)(B). (see enclosed Fact Sheet). Therefore, your farm meets the definition of a CAFO under Section 502 of the Clean Water Act and Indiana law. If you believe you have received this notice in error please contact Mr. Dennis Lasiter at the number indicated at the end of this document.

For your information, the Indiana Department of Environmental Management (IDEM) will publish a second notice of rulemaking on February 1, 2003, in the Indiana Register. The draft rule will establish a general permit for CAFOs. The intent of this draft rule is to establish as simple a mechanism as possible to transition from Indiana's Confined Feeding Operation (CFO) approval program to the federally required NPDES permit. The draft general permit rule will also strive to meet the new U.S. EPA regulations for CAFOs. The public comment period on the draft general permit rule will be open through March 2, 2003. See www.in.gov/idem/land for a copy of the draft general NPDES permit rule.

Enclosure 3

It is IDEM's intent to work with the Water Pollution Control Board to complete the rulemaking for a general NPDES permit for federally-defined CAFOs as soon as practicable. It is also IDEM's intent to include provisions in the general NPDES permit rule which would allow the individual NPDES permit application submitted by your operation to satisfy the requirements for submittal of a Notice of Intent (NOI) to comply with the general NPDES permit. However, because IDEM cannot predict the exact date for promulgation of a general permit rule, we may issue some individual permits prior to the effective date of a general permit rule.

IDEM intends to work with all interested persons in developing the requirements of the general NPDES CAFO rule. We are hopeful that the final general permit rule will rely heavily on the recently completed CFO rule that became effective in March 2002. It is apparent from the final U.S. EPA regulation of December 2002 that some additional requirements must be established to meet the federal regulations.

Please find enclosed, an individual NPDES permit application packet. Please submit your application by April 30, 2003. Questions pertaining to the applications for an NPDES permit may be directed to Ms. Chris Rousch of the IDEM NPDES permit program at 800-451-6027, ext. 3-5961, or Mr. Dennis Lasiter of the IDEM CFO approval program at 800-451-6027, ext. 2-8732.

Sincerely,

Bruce H Palin
Deputy Assistant Commissioner
Office of Land Quality

Group 3
Enclosures